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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA and THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. 3:18-cv-07591-CRB
Acting by and through San Francisco City Attorney DENNIS J. HERRERA,)	PLAINTIFFS' UPDATED PROPOSED DISCOVERY AND TRIAL SCHEDULE
)	JUDGE: Hon. Charles R. Breyer
Plaintiffs,)	
vs.)	
PURDUE PHARMA L.P., et al.,)	
Defendants.)	

Pursuant to the Court’s Order on May 5, 2020 (“May 5 Order”) (ECF No. 199), Plaintiffs the City and County of San Francisco, California (the “City”) and the People of the State of California, acting by and through San Francisco City Attorney Dennis J. Herrera (the “People”) (collectively, “Plaintiffs”), hereby submit this proposed litigation and trial schedule and a summary of the events that have transpired since the parties submitted their Joint Status Report on May 4, 2020 (“May 4 Joint Status Report”) (ECF No. 198).

This Court granted the parties’ joint request to extend the deadline to submit discovery and trial schedules as a result of unexpected uncertainties and obstacles caused by the COVID-19 pandemic. In March 2020, San Francisco’s Department of Public Health issued an “Order of the Health Officer of the City and County of San Francisco” directing all individuals therein to shelter in place due to the COVID-19 pandemic (“SF Shelter-In-Place Order”). Although the City has begun to relax certain requirements imposed by the SF Shelter-In-Place Order, there is no expiration date in sight. In San Francisco and other cities across the country, substantial limitations continue to remain in place, impacting all parties’ and counsel’s ability to proceed with discovery to the full extent possible under usual circumstances. Notwithstanding the ongoing limitations, the parties have diligently engaged in both motion practice and discovery efforts since this Court’s May 5 Order.

I. RECENT DEVELOPMENTS

A. Dispositive Motions

On April 17, 2020, Defendants filed nine motions to dismiss and one request for judicial notice (ECF Nos. 162, 165-172, 176). Plaintiffs responded to each of those filings on May 15, 2020 (ECF Nos. 200-209). Defendants filed their respective reply briefs on May 29, 2020 (ECF Nos. 214-222), and the motions are now fully briefed.

B. Discovery

Notwithstanding obstacles imposed by the SF Shelter-In-Place Order, the parties are making substantial progress on discovery, including the following:

- Discovery Requests: As reported in the May 4 Joint Status Report, the parties have propounded discovery requests and will meet the mutually agreed upon 60-day deadline to respond to these requests. Plaintiffs’ responses will be timely served on Defendants on June 8, 2020. The parties should be required to meet and confer

1 regarding appropriate per-side limits on interrogatories and requests for admission as
2 well as the timing for service of such requests, prior to serving them.

- 3 • Plaintiffs' Fact Sheet/Initial Disclosures: Pursuant to this Court's April 2 Order (ECF
4 No. 142) and as agreed to in the May 4 Joint Status Report, on May 29, 2020,
5 Plaintiffs served on Defendants their First Amended Government Plaintiff Fact Sheet
6 in lieu of initial disclosures. Notwithstanding the substantial obstacles that the SF
7 Shelter-In-Place Order has placed across all of the City's departments, to date,
8 Plaintiffs have identified 11 custodians. Plaintiffs have notified Defendants that they
9 will continue to identify key persons with relevant knowledge of opioid-related
10 issues. The First Amended Government Plaintiff Fact Sheet is attached hereto as
11 Exhibit A.
- 12 • Clarification of Decommissioning of City Databases: As reported in Plaintiffs'
13 Proposed Discovery Schedule, filed with the Court on March 13, 2020 (ECF No.
14 129), the City has been engaged in an ongoing decommissioning of certain
15 healthcare-related databases – a project that commenced prior to the MDL court's
16 remand of this case. Plaintiffs further investigated the status of this
17 decommissioning and, on June 2, 2020, updated Defendants on the decommissioning
18 dates and the subject matter of the data existing in the subject databases. The vast
19 majority of relevant documents will be, or already are, preserved on other accessible
20 databases or servers. To the extent that any data is not preserved, analogous data
21 proved ancillary to the claims and defenses asserted in other bellwether cases similar
22 to those asserted here. Plaintiffs' letter to Defendants discussing these discrete issues
23 is attached hereto as Exhibit B.

16 **II. RENEWED PROPOSED TRIAL SCHEDULE**

17 To date, it remains unclear when the COVID-19-related limitations on the City and its
18 employees will be eased. And although businesses are slowly beginning to reopen, a substantial
19 amount of the City's resources have been and will continue to be diverted from this litigation toward
20 combatting the COVID-19 pandemic. Nonetheless, Plaintiffs are moving forward as expeditiously
21 as possible. Plaintiffs are prepared to begin production of documents with the understanding that
22 this will be an ongoing process as many of the City employees with pertinent knowledge of the
23 subject matter of this litigation remain completely focused on COVID-19-related issues. Plaintiffs
24 are also prepared to meet and confer with Defendants regarding a protocol for remote depositions,
25 search terms for document productions, and appropriate limits and timing of additional discovery to
26 be served.

27 In the event that COVID-19-related restrictions are fully lifted in the near-term, Plaintiffs
28 expect to be able to meet the following proposed schedule. Plaintiffs, however, recognize that any

trial date proposed at this time may need to be reevaluated as events unfold and more information regarding the status of the pandemic becomes available.

Deadline	Plaintiffs' Previous Proposal	Plaintiffs' Updated Proposal
Close of fact discovery	October 30, 2020	January 29, 2021
Plaintiffs' expert reports	November 16, 2020	February 16, 2021
Defendants' expert reports	November 16, 2020	February 16, 2021
Close of expert discovery	December 23, 2020	March 26, 2021
Motions for summary judgment and <i>Daubert</i> motions	January 29, 2021	April 23, 2021
Oppositions to motions for summary judgment and <i>Daubert</i> motions	February 26, 2021	May 21, 2021
Replies in support of motions for summary judgment and <i>Daubert</i> motions	March 5, 2021	June 4, 2021
All trial materials due	March 12, 2021	June 11, 2021
Final Pretrial Conference	March 19, 2021	June 18, 2021
Trial	March 29, 2021	June 28, 2021

For the Court's convenience, Plaintiffs also set forth the following chart that outlines trials currently scheduled in other opioid litigation across the country:

Opioids Litigation Schedules– MDL Case Tracks, NY and CA

Case	Plaintiffs	Judge	Juris.	Defendants ¹	Theories of Liability ¹	MTDs Fully Briefed	Trial Date
CT1B	Summit Cty.; Cuyahoga Cty.	Polster, J.	MDL – N.D. Ohio	Chain Pharmacies only	Distribution	No add'l MTDs ²	11/09/20
CT2	Cabell Cty.; City of Huntington	Faber, J.	MDL – S.D. W. Va.	Big 3 Distributors ³ only	Distribution	No add'l MTDs ⁴	10/19/20 & 01/04/21

¹ The defendants and theories of liability listed are those which the parties expect will be tried during the trial settings identified. Some defendants and claims have been severed. "Marketing" refers to allegations involving false marketing; "Distribution" refers to allegations involving the failure to report and halt suspicious orders; and "Dispensing" refers to allegations involving the failure to prevent the dispensing of suspicious orders.

² Motions to dismiss were asserted and ruled upon in CT1A prior to the October 2019 trial setting. *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-02804 (N.D. Ohio), ECF Nos. 1025 (Ruiz, J.), 1203 (Polster, J.), and 2131 (Polster, J.).

³ "Big 3 Distributors" refers to the family of Defendants for each of Cardinal Health, McKesson, and AmerisourceBergen.

⁴ Rule 12(b) motions were asserted and pending before Judge Polster when they were withdrawn prior to remand. No additional Rule 12(b) motions will be forthcoming.

Case	Plaintiffs	Judge	Juris.	Defendants ¹	Theories of Liability ¹	MTDs Fully Briefed	Trial Date
CT3	Lake Cty.; Trumbull Cty.	Polster, J.	MDL – N.D. Ohio	Chain Pharmacies only	Distribution, Dispensing	07/13/20	05/10/21
CT4	City & Cty. of SF	Breyer, J.	MDL – N.D. Cal.	Manufacturers, Distributors, Pharmacies	Distribution, Dispensing	05/29/20	TBD
CT5	Cherokee Nation	White, J.	MDL – E.D. Okla.	Manufacturers, Distributors, Pharmacies	Marketing, Distribution, Dispensing	06/17/20	TBD
CT6	City of Chicago	Alonso, J.	MDL – N.D. Ill.	Manufacturers	Local Ordinance Claims	07/06/20	TBD
NY	Nassau Cty.; Suffolk Cty.; NY AG	Garguilo, J.	State	Manufacturers, Distributors, Pharmacies	Marketing, Distribution ⁵	N/A	08/04/20
CA	Santa Clara Cty., <i>et al.</i>	Wilson, J.	State	Manufacturers	Marketing	No add'l MTDs	03/22/21

⁵ In the NY coordinated litigation, plaintiffs responded to the pharmacy defendants' summary judgment motions, arguing that insufficient discovery had been produced regarding the dispensing claims to oppose defendants' motions. Judge Garguilo dismissed plaintiffs' dispensing claims holding that plaintiffs had not supported a finding of vicarious liability, while retaining plaintiffs' distribution claims against the chain pharmacies. Because plaintiffs had not asserted vicarious liability claims, they filed a motion to reargue the ruling, which is currently pending.

1 Plaintiffs respectfully request that the Court adopt the litigation and trial schedule set forth
2 herein but, given the uncertainty of the times, that it do so with the understanding that continued
3 COVID-19-related restrictions and/or a resurgence of the pandemic may well require the Court and
4 the parties to revisit the discovery and trial schedule in the future. Plaintiffs also request that the
5 Court require the parties to meet and confer regarding limitations and timing before propounding
6 additional discovery requests.

7 DATED: June 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 8, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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